

## ISSUE INDEX

*The Issue Index is arranged alphabetically. The issue headings appear on the left margin underlined and in bold. Below each heading you will find short, descriptive summaries of the Commission's rationale and holdings. Each summary, in turn, is followed by a citation to the applicable Commission decision.*

***NOTE: The summaries are not law. Please refer to the official Commission decisions for the actual text, rationale, and holdings.***

### **Attorney Fees**

The Commission may award attorney fees and costs on petition for review when an agency has acted without a reasonable basis in fact or law.

*Wikse v. Idaho Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

*Anderson v. Idaho Dep't of Correction*, IPC No. 96-11 (Decision and Order on Request for Attorney Fees and Costs, August 17, 1998)

Requests for attorney fees and costs on petition for review must be filed within ten days of the Commission's decision.

*Wikse v. Idaho Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

*Anderson v. Idaho Dep't of Correction*, IPC No. 96-11 (Decision and Order on Request for Attorney Fees and Costs, August 17, 1998)

In deciding to award attorney fees and costs on petition for review, the Commission must consider the following factors: 1) the time and labor required in representing the employee; 2) the experience and ability of the attorney representing the employee; 3) the prevailing charges for similar work; 4) the amount involved and the results obtained; and 5) awards in similar cases.

*Wikse v. Idaho Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Request for Attorney Fees and Costs, June 17, 1998)

*Anderson v. Idaho Dep't of Correction*, IPC No. 96-11 (Decision and Order on Request for Attorney Fees and Costs, August 17, 1998)

A rate of \$150.00 per hour in attorney fees exceeds the rates previously approved by the Commission, but is reasonable when the employee obtained complete relief in a complex matter and when counsel for employee has practiced law in excess of thirty years, and when the time spent in representing the employee was reasonable in light of the circumstances.

*Wikse v. Idabo Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

*Anderson v. Idabo Dep't of Correction*, IPC No. 96-11 (Decision and Order on Request for Attorney Fees and Costs, August 17, 1998)

The Commission has determined that a reasonable cost for photocopying is ten cents per page.

*Wikse v. Idabo Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Request for Attorney Fees and Costs, June 17, 1998)

### **Burden of Proof**

In cases involving Rule 190 discipline, the state must prove its case by a preponderance of the evidence.

*Wikse v. Idabo Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

### **Credibility of Witnesses**

Where credibility of witnesses is an issue, the Commission will usually rely on the determination of the hearing officer who was in a position to judge the credibility and relative credibility of the witnesses.

*Wikse v. Idabo Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

### **Declaratory Rulings**

The purpose of a declaratory ruling is to provide a procedure to allow persons to have the applicability of statutes and rules determined without being forced to risk the sanctions for violating the provisions of a statute or rule that might or might not be applicable.

*McAllister, et al., v. Stacey, et al.*, IPC No. 95-04 (Declaratory Ruling, April 10, 1998)

### **Evidence**

Strict rules of evidence do not apply in administrative hearings. Idaho Code § 67-5251, IDAPA 4.1.01.600.

*McAllister, et al., v. Stacey, et al.*, IPC No. 95-04 (Declaratory Ruling, April 10, 1998)

The evidentiary provisions for administrative proceedings are intended to allow the consideration of all relevant information, excluding only evidence which is privileged or protected by statute or constitutional provisions.

*McAllister, et al., v. Stacey, et al.*, IPC No. 95-04 (Declaratory Ruling, April 10, 1998)

Assuming, for the purposes of argument, that the performance evaluations of non-parties are relevant to a proceeding before the Commission, they are protected from disclosure by statute and will not be admissible in proceedings before the Commission without the written consent of the affected employees.

*McAllister, et al., v. Stacey, et al.*, IPC No. 95-04 (Declaratory Ruling, April 10, 1998)

### **Intervention**

Intervention before the Idaho Personnel Commission is governed by Rules 350 through 355 of the Idaho Administrative Procedure Act.

*Dep't of Transportation v. Idaho Personnel Commission*, IPC No. 97-05 (Decision and Order on Petition for Review, February 13, 1998)

Intervention is not a matter of right; intervention depends upon the issuance of an order by a hearing officer who has determined that the intervenor has a direct and substantial interest in the proceeding in which intervention is sought.

*Dep't of Transportation v. Idaho Personnel Commission*, IPC No. 97-05 (Decision and Order on Petition for Review, February 13, 1998)

Petitions to intervene may be denied, where, in the opinion of the hearing officer, there is no substantial interest in the proceedings on the part of the party seeking intervention.

*Dep't of Transportation v. Idaho Personnel Commission*, IPC No. 97-05 (Decision and Order on Petition for Review, February 13, 1998)

## **Jurisdiction**

The Idaho Personnel Commission is a tribunal of limited jurisdiction.

*Sanchez v. Dep't of Correction*, IPC No. 96-17 (Decision and Order on Petition for Review, February 23, 1998)

Idaho Code § 67-5316(1)(a) clearly limits appeals to “disciplinary dismissal, demotion or suspension, or classification.”

*Sanchez v. Dep't of Correction*, IPC No. 96-17 (Decision and Order on Petition for Review, February 23, 1998)

Involuntary transfers are not appealable to the Commission.

*Sanchez v. Dep't of Correction*, IPC No. 96-17 (Decision and Order on Petition for Review, February 23, 1998)

An employee who receives a disciplinary suspension without pay and is transferred, and who does not appeal the suspension, and thereafter refuses the transfer and is terminated, cannot claim that the termination is disciplinary in nature.

*Sanchez v. Dep't of Correction*, IPC No. 96-17 (Decision and Order on Petition for Review, February 23, 1998)

The Commission lacks jurisdiction to hear interlocutory appeals from decisions of the hearing officer.

*Stacey v. Idaho Dep't of Labor*, IPC No. 95-04 (Decision and Order on Petition for Review, April 10, 1998)

The Commission has the authority to determine what statutory and administrative evidentiary provisions will apply to proceedings before it.

*McAllister, et al., v. Stacey, et al.*, IPC No. 95-04 (Declaratory Ruling, April 10, 1998)

## **Practice and Procedure Before the Commission**

Commission participation in the proceedings before the hearing officer (by deciding interlocutory appeals) is inconsistent with the statutory scheme that delineates and separates the appeal process and the petition for review process.

*Stacey v. Idaho Dep't of Labor*, IPC No. 95-04 (Decision and Order on Petition for Review, April 10, 1998)

An interlocutory appeal that involves the interpretation and application of rules and statutes which have broad applicability and are beyond the purview of the Commission's expertise should be deferred to the courts for decision.

*Stacey v. Idaho Dep't of Labor*, IPC No. 95-04 (Decision and Order on Petition for Review, April 10, 1998)

### **Practice and Procedure Before the Hearing Officer**

When a motion is filed and the moving party desires oral argument, a request for hearing must be included in the motion. Rule 260.03, Idaho Rules of Administrative Procedure.

*Gill v. Idaho Personnel Commission*, IPC No. 97-05 (Decision and Order on Petition for Review, February 27, 1998)

Absent a specific request for oral argument, the decision to determine a matter based on a review of the record and the briefs is a matter within the discretion of the hearing officer. Rule 565, Idaho Rules of Administrative Procedure.

*Gill v. Idaho Personnel Commission*, IPC No. 97-05 (Decision and Order on Petition for Review, February 27, 1998)

Commission participation in the proceedings before the hearing officer (by deciding interlocutory appeals) is inconsistent with the statutory scheme that delineates and separates the appeal process and the petition for review process.

*Stacey v. Idaho Dep't of Labor*, IPC No. 95-04 (Decision and Order on Petition for Review, April 10, 1998)

It is not reversible error for the hearing officer to adopt substantial portions of findings and conclusions proposed by one of the parties.

*Anderson v. Idaho Dep't of Correction*, IPC No. 96-11 (Decision and Order on Petition for Review, July 2, 1998)

### **Rule 190 Discipline**

In matters involving Rule 190 discipline, the questions before the Commission are whether the department proved, by a preponderance of the evidence, that the employee was properly subject to discipline, and whether the hearing officer's findings of fact are supported by substantial, competent evidence.

*Wiese v. Idaho Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

*Anderson v. Idaho Dep't of Correction*, IPC No. 96-11 (Decision and Order on Petition for Review, July 2, 1998)

#### **Rule 190.01.a: Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the department or the personnel commission**

A violation of Rule 190.01.a is not proven where employee receives a performance rating of “fully satisfactory” for the period involving the alleged “failure to perform” and subsequently receives an “above satisfactory” rating prior to being dismissed.

*Anderson v. Idaho Dep’t of Correction*, IPC No. 96-11 (Decision and Order on Petition for Review, July 2, 1998)

**Rule 190.01.b: Inefficiency, incompetency, or negligence in performing duties**

The department failed to prove, by a preponderance of the evidence, that an employee had violated Rule 190.01.b, where department alleged performance problems dating back several years but where employee received satisfactory performance evaluation and merit raise within sixty days of his disciplinary dismissal, and where other allegations concerning employee’s performance were not proven by substantial, competence evidence.

*Wikse v. Idaho Dep’t of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

**Rule 190.01.e: Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the department**

The department failed to prove, by a preponderance of the evidence, that an employee had violated Rule 190.01.e when the witnesses it relied upon to prove that the employee had made threats against supervisors were found to be not credible by the hearing officer.

*Wikse v. Idaho Dep’t of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

The department failed to prove, by a preponderance of the evidence, that an employee had violated Rule 190.01.e by failing to cooperate in an investigation when the employee participated in three interviews and two polygraph examinations.

*Anderson v. Idaho Dep’t of Correction*, IPC No. 96-11 (Decision and Order on Petition for Review, July 2, 1998)

The department failed to prove, by a preponderance of the evidence, that an employee had violated Rule 190.01.e. by failing to turn over documents when the employee disclosed the existence of additional documents as soon as he discovered them.

*Anderson v. Idaho Dep’t of Correction*, IPC No. 96-11 (Decision and Order on Petition for Review, July 2, 1998)

## **Standard and Scope of Review**

When considering a petition for review, the Commission shall review the record of the proceeding below together with any briefs or transcripts submitted by the parties.

*Sanchez v. Dep't of Correction*, IPC No. 96-17 (Decision and Order on Petition for Review, February 23, 1998)

*Wikse v. Idaho Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

*Anderson v. Idaho Dep't of Correction*, IPC No. 96-11 (Decision and Order on Petition for Review, July 2, 1998)

Findings of fact made by the hearing officer must be supported by substantial, competent evidence.

*Sanchez v. Dep't of Correction*, IPC No. 96-17 (Decision and Order on Petition for Review, February 23, 1998)

*Wikse v. Idaho Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

The Commission exercises free review over issues of law.

*Sanchez v. Dep't of Correction*, IPC No. 96-17 (Decision and Order on Petition for Review, February 23, 1998)

*Stacey v. Idaho Dep't of Labor*, IPC No. 95-04 (Decision and Order on Petition for Review, April 10, 1998)

*Wikse v. Idaho Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

*Anderson v. Idaho Dep't of Correction*, IPC No. 96-11 (Decision and Order on Petition for Review, July 2, 1998)

On petition for review, the Commission may “affirm, reverse or modify the decision of the hearing officer, may remand the matter, or may dismiss it for lack of jurisdiction.” Idaho Code § 67-5317(1).

*Sanchez v. Dep't of Correction*, IPC No. 96-17 (Decision and Order on Petition for Review, February 23, 1998)

*Stacey v. Idaho Dep't of Labor*, IPC No. 95-04 (Decision and Order on Petition for Review, April 10, 1998)

*Wikse v. Idaho Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

*Anderson v. Idaho Dep't of Correction*, IPC No. 96-11 (Decision and Order on Petition for Review, July 2, 1998)

On appeal to the Idaho Personnel Commission, matters are assigned to a hearing officer who conducts a full evidentiary hearing and may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law.

*Wiese v. Idaho Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Petition for Review, April 28, 1998)

*Anderson v. Idaho Dep't of Correction*, IPC No. 96-11 (Decision and Order on Petition for Review, July 2, 1998)